

AG Opinion Number 95-002

February 28, 1996
C. Kay Bryson
Utah County Attorney
100 East Center #2100
Provo, Utah 84606

RE: AG Opinion Request Regarding Transient Room Tax Request No. 95-02

ATTORNEY GENERAL OPINION 95-02

TRANSIENT ROOM TAX

QUESTIONS ASKED

This letter addresses the four questions for which you requested an Attorney General Opinion. The questions are:

- (1) whether the provisions of Utah Code Ann. § 17-31-2 (Purpose of Transient Room Tax) allows representatives from the Utah County Convention and Visitors Bureau to spend revenues from transient room taxes to attend tourism trade shows;
- (2) whether Utah County may lawfully use transient room tax revenues to send a representative to Budapest, Hungary to attend the Awards Ceremony of the 2002 Winter Olympic Games, (you stated you would like a response to this even if the ceremony date is already past);
- (3) whether Utah County may use transient room or restaurant tax revenues to fund the Central Utah Film Commission, and;
- (4) under what circumstances and for what purposes Utah County may disburse restaurant tax revenues collected under Utah Code Ann. § 59-12-603 to cities within the County.

SUMMARY

Utah Code Ann. § 17-31-2 permits Utah County to use transient room tax revenues to send representatives from the Utah County Convention and Visitor's Bureau to tourism trade shows because it fits a statutorily stated purpose. However, Utah County may not use transient room taxes to send a representative to the 2002 Olympic Games Awards Ceremony because such an expenditure does not fall within the purpose of the tax. Also, Utah County may not use the transient room tax or the restaurant tax to fund the Central Utah Film Commission because doing so does not serve the statutorily stated purpose of the taxes. Finally, Utah County may only disperse restaurant tax revenues to cities within the county if the cities use the funds to promote tourism.

DISCUSSION

I. Analysis of Utah Code Ann. § 17-31-2

The purpose of the transient room tax is defined in Utah Code Ann. § 17-31-2(1) which states:

Any county legislative body may impose the transient room tax provided for in § 59-12-301 for the purposes of establishing, financing, and promoting recreational, tourist, and convention bureaus, and to acquire, lease, construct, furnish, maintain, or operate convention meeting rooms, exhibit halls, visitor information centers, museums, and related facilities, and to acquire or lease land required for or related to these purposes.

Utah Code Ann. § 17-31-2(1)(1991).

Section 17-31-2(1) has two prongs. The first prong states that counties shall use the collected tax for establishing, financing and promoting recreational, tourist, and convention bureaus, while the second prong allows counties to use the money to acquire, lease, construct, furnish, maintain, or operate convention meeting rooms and other similar tourist facilities.

The second prong is facilities oriented, and thus, attending tourism trade shows cannot be said to directly further any of the goals set forth in the second prong. A plain reading of the first prong however, does not seem to indicate that it is restricted only to physical facilities. Statutory terms "should be interpreted and applied according to [their] usually accepted meaning, when the ordinary meaning of the term results in an application that is neither unreasonably confused, inoperable, nor in blatant contradiction of the express purpose of the statute." *Morton Int'l, Inc. v. Auditing Div. of the Utah State Tax Comm'n*, 814 P.2d 581, 590 (Utah 1991). A common source used to determine the ordinary meaning of a statute is Webster's Collegiate Dictionary. *Id.* at 590. See also *State v. Serpente*, 768 P.2d 994, 996 (Utah App. 1989), *In Re J.D.M.*, 810 P.2d 494, 497 (Utah App. 1991). Webster's defines promotion as "the act of furthering the growth or development of something . . ." Webster's Ninth New Collegiate Dictionary 942 (1984). Bureau is defined as a "specialized administrative unit." *Id.* at 188. Accordingly, a recreational, tourist or convention bureau may be an administrative unit, a group of people as opposed to an actual building, particularly in light of the fact that the second prong, which enumerates many types of physical facilities, does not use the term bureau.

A. Answer to Question One.

You indicated that from time to time, Utah County sends representatives from the Utah County Convention and Visitors Bureau to tourism trade shows held throughout the country. To finance these trips, Utah County uses revenues from the transient room taxes imposed by the County under Utah Code Ann. § 59-12-301. Applying the previously discussed definitions of Utah Code Ann. § 17-31-2 here, the first prong of the statute allows transient room tax revenue to be used for furtherance or growth of the administrative unit that oversees recreation, tourism and conventions.

Accordingly, while the statute does not allow transient room tax funds to be used for just any tourist related purpose, attendance at a tourism trade show can reasonably fit within the purpose set forth in the statute. The focus and purpose of a tourism trade show is tourism and attendance by members of the Utah County Convention and Visitors Bureau could be reasonably construed as furthering the growth of a recreational, tourist or convention bureau. Thus, while the statutory mandate in § 17-31-2(1) is fairly narrow, it does not rule out the use of transient room tax money for representatives of a convention and visitors bureau to attend tourist trade shows.

B. Answer to Question Two.

You indicated that although no 2002 Olympic events were scheduled to be held in Utah County, individuals within the Utah County government wished to attend the 2002 Olympic Awards ceremony in Budapest, Hungary and it was proposed that their travel expenses be paid for from transient room tax funds.

The purposes and uses of the transient room tax revenue have been discussed in the previous section of this Opinion. While tourism and recreation are related to the Olympics, the actual purpose of the Olympic Awards Ceremony is to announce the winner of the bid for the 2002 Winter Olympics. In this case, particularly when officials have stated that no Olympic events will be held in Utah County, attending the ceremony does not directly come within one of the enumerated purposes of the statute. As we have indicated previously in Attorney General's Informal Opinion 90-05, and based on the language of the statute, the restrictions placed on the use of transient room tax revenues are fairly narrow. Under the first prong of the statute, attending the ceremony cannot reasonably be construed as directly "establishing, financing, and promoting recreational, tourist, and convention bureaus." Nor does attendance come within the purpose of the second prong to "acquire, lease, construct, furnish, maintain, or operate" tourist facilities, particularly when there are no planned Olympic venues in Utah County. Therefore, Utah County may not lawfully expend transient room tax money to send a representative to the Olympic Awards Ceremony in Budapest, Hungary.

C. Answer to Question Three.

Utah County has created a subdivision of the Utah County Convention and Visitor's Bureau known as the Central Utah Film Commission. You stated that while there is a loose association between the Film Commission and other surrounding counties, the Commission is essentially a creation of Utah County funded with transient room tax revenues. There are no county ordinances that describe the Commission, but you have provided the most recent job description of the Director of the Film Commission.

The Utah Legislature enacted the transient room tax statutes and restaurant tax statutes to promote tourism. The Legislature outlined the purpose the transient room tax in Utah Code Ann. § 17-31-2(1) as set forth previously. When the

Legislature discussed the transient room tax and its enabling statute § 59-12-301 in conjunction with the implementation of the restaurant tax in 1990, members indicated that the tax should only be used for tourist promotion and not for nontourist purposes. (Recording of Senate Proceedings on S.B. 175, February 13, 1990.)

Although the Utah Film Commission is a subdivision of a recreational, tourist, and convention bureau, the Commission's purposes do not relate to tourism.

According to the job description of the Director of the Central Utah Film Commission, the Commission is responsible for "foster[ing] the infusion of new dollars into the region's economy from out-of-state film and video production companies and assist[ing] in-state companies seeking film or video locations." These objectives do not establish, finance or promote "recreational, tourist and convention bureaus," nor do they assist in leasing or acquiring land or facilities "required for or related to these purposes." Although the Film Commission may indirectly benefit tourism, this should not qualify the Commission to receive transient room tax revenues under the specific language of the statute and the legislative intent that all of the transient room tax would go for tourist promotion. Therefore, funding the Central Utah Film Commission is not an appropriate use of revenues from the transient room tax.

Likewise, Utah County may not use the restaurant tax codified at Utah Code Ann. § 59-12-601 et. seq. to support the Central Utah Film Commission. The restaurant tax allows counties to "impose a tourism, recreation, cultural, and convention tax . . . not to exceed 1% of all sales of prepared foods and beverages that are sold by restaurants" Utah Code Ann. § 59-12-603(1)(b) (1991). The use of the restaurant tax is set forth in Utah Code Ann. § 59-12-603(2)(1991), which states that counties may use revenues from the tax to finance "tourism promotion, and the development, operation, and maintenance of tourist, recreation, cultural, and convention facilities" Id.

In contrast, the Film Commission's purpose seems to be to foster and sustain the film industry in central Utah, not to promote tourism or tourist related facilities.

Consequently, the Commission fails to accomplish any objectives of the restaurant tax statute as defined. Therefore, Utah County cannot legally use revenues from the restaurant tax to fund the Central Utah Film Commission.

D. Answer to Question Four.

You indicated that restaurant tax revenues collected by Utah County in excess of those needed to retire the bonded indebtedness for construction of the Convention Center at Utah Valley State College are returned to the various cities of the county through a grant/application process. While some of these funds are used by the cities to improve local museums and other cultural facilities, these funds are often used by the cities to meet the expenses of their annual city celebrations. While these celebrations may attract visitors from other cities in the county and perhaps even some from outside the county, you stated that they are held primarily for the fun and enjoyment of the city residents.

The statute defining the use of the restaurant tax, Utah Code Ann. § 59-12-603, clearly designates that counties should use revenues from the restaurant tax to promote tourism or develop, operate and maintain related facilities. The statute that allows Utah County to share restaurant tax revenues with its cities, Utah Code Ann. § 11-13-16.5, states:

Any county, city, town, or other local political subdivision may, at the discretion of the local governing body, share its tax and other revenues with other counties, cities, towns, or local political subdivisions. Any decision to share tax and other revenues shall be by local ordinance, resolution, or interlocal agreement. Utah Code Ann. § 11-13-16.5(1992). Pursuant to this statute, we understand that Utah County has adopted an ordinance which dictates that revenue received from restaurant taxes and distributed to cities will be used solely for promoting tourism and developing tourist, recreation, cultural, and convention facilities.

Although Utah Code Ann. § 11-13-16.5 does not require political subdivisions to use revenues from taxes it shares with other political subdivisions for any specific purpose, § 11-13-16.5 must be read in harmony with § 59-12-603. See *Stahl v. Utah Transit Authority*, 618 P.2d 480, 481 (Utah 1980)(ruling that statutory provision must be construed so as to make it harmonious with other statutes relevant to the subject matter.)

Reading the two statutes in harmony, Utah County cities may only use restaurant tax revenues authorized pursuant to 59-12-601 et. seq., and shared with them pursuant to § 11-13-16.5, for the purposes detailed in § 59-12-603. Therefore, cities may only use restaurant tax revenue to promote tourism and develop, operate and maintain specific facilities enumerated in the statute. Accordingly, if a city celebration does not meet one of those criteria set forth in the statute, restaurant tax monies should not be used to support it. If the facts as stated are true, and the city celebrations are put on for the enjoyment of the city residents, then the purpose of the statute is not being met and cities receiving restaurant tax revenues may not use the revenues for such celebrations.

CONCLUSION

Because sending representatives from the Utah County Convention and Visitors Bureau to tourism trade conferences furthers the development of a bureau specializing in recreation, tourism or conventions, the County may legally use transient room taxes to fund these visits. Utah County could not have used transient room tax revenues to send representatives to the Olympic Awards Ceremony because the plain language of the tax statute does not provide for such a use. Moreover, because its objectives fail to further the purposes of the taxes, Utah County may not use restaurant or transient room taxes to fund the

Central Utah Film Commission. Finally, both state and county law requires Utah County to share restaurant tax revenues with cities that use the funds to promote tourism, and the facts as you have presented them indicate that local celebrations do not meet these criteria.

Sincerely,
Susan L. Barnum
Assistant Attorney General